

Organisation of working time

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The Council sought to reach political agreement on two draft directives, the first one aimed at amending Directive 2003/88/EC concerning certain aspects of the organisation of working time, the second one aimed at establishing working conditions for temporary agency workers (see [COD/2002/0072](#)).

In July 2007, the Presidency announced that it would consult with different Member States in order to evaluate the conditions for balanced solutions concerning the legislative files under discussion in the Council, namely the two above mentioned draft directives.

After extensive bilateral consultations with different Member States and the Commission, the Presidency decided to present compromise proposals for both directives. In the past, both draft directives had been discussed separately, but the Presidency considered they were linked since they deal with central aspects of the regulation of contemporary labour markets.

Given the difficulties in finding separate solutions for each of the files, the Presidency decided that there would be added value in working on a simultaneous and integrated solution, thus allowing Member States to find a balance between the two directives that would be acceptable from the political point of view.

This joint approach was widely accepted by a large majority of Member States, in the Council. The connection between the two directives, and more specifically the proposals presented by the Presidency, was considered a solid and viable basis for negotiation towards an agreement on both.

The Presidency explored different solutions, within the balanced framework underlying the proposals, to reach an enlarged consensus that would be politically desirable.

Bearing in mind the fact that this linked proposal was still very recent, as well as the sensitive nature of these directives for some Member States and the importance of exploring all attempts to reach as broad an agreement as possible before the final decision was taken, the Council agreed that the best option at this moment was to **postpone a decision**, in order to further pursue the dialogue.

Nevertheless, the Presidency noted that a vast majority of Member States had spoken in favour of an **integrated solution for the directives**, building an overall equilibrium between the two. Thus, and respecting the dominant orientation within the Council, the Presidency stressed that this openness to dialogue and consensus sought only to strengthen the conditions for a solution that reflected the position of a clear and strong majority. The proposals presented are a major step forward, because they now open up an appropriate way of reaching a solution on these files. **There is a real margin for political decision in 2008**, building on the solid basis for progress that the Council has just established. The forthcoming presidencies and the Commission might proceed with efforts to achieve a positive and final outcome on both directives, given the importance of the issues at stake and the specific needs of many Member States.

Progress on the “working time” Directive: Directive 2003/88/EC establishes minimum requirements concerning the organisation of working time, inter alia in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.

The objective of the draft amending Directive currently under examination is twofold:

- Firstly, it would prevent some of the consequences of the European Court of Justice's case law, in particular of the rulings in the SIMAP and Jaeger cases, which held that any on-call duty performed by a doctor, as long as he or she is required to be physically present in the hospital – even if he or she spends his or her time resting – must be regarded as working time. It is currently impossible for Member States to apply European case law strictly, without a huge impact on their medical structures and economies. To avoid those negative effects, the draft Directive would introduce a definition of "inactive part of on-call time";
- Secondly, to review some of the provisions of Directive 2003/88/EC concerning the possibility of not applying the maximum weekly working time (48 hours) if the worker agrees to work longer hours (the "opt-out" provision).

With a view to achieving agreement, the Portuguese Presidency tabled a set of proposals, built on previous Presidencies' compromise texts. The Presidency text provided for the possibility of the **opt-out clause**, with some elements being taken into account to guarantee the protection of health and safety of workers, in particular:

- the opt-out clause would be seen as an exception, **the working week of a maximum of 48 hours being the general rule in the EU**;
- implementation of the opt-out must be laid down by collective agreement, agreement between the social partners or by national law;
- employers and employees must consider other flexibility provisions – such as the longer reference period when counting working time – before making use of the opt-out provision;
- **it would not be possible for a Member State to make use of both the longer reference period and the opt-out clause**;
- an employee who refuses to work more than the average working time must not suffer as a result;
- an agreement signed at the beginning of the working contract would be null and void;
- a weekly limit of working hours would be set for workers who agree to the opt-out clause;
- there must be follow-up by the national authorities;
- a specific evaluation must be conducted at European level of the provisions concerning the opt-out and the implementation of longer reference periods; taking into account this evaluation, the Commission may, if appropriate, submit a proposal to revise the Directive.